85-548

Supreme Court, U.S.
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SEP 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

No._____

In the Supreme Court of the United States

October Term, 1985

RAYMOND WALTER AHO,
Petitioner,

VS.

THE STATE OF CALIFORNIA,
Respondent.

PETITON FOR WRIT OF CERTIORARI

TO THE CALIFORNIA COURT OF APPEAL
FIFTH APPELLATE DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Fourth Amendment Probable Cause Requirement apply to the situs to be searched?

2. Assuming government agents have probable cause to believe that a person supplies contraband, does that provide a substanstial basis for determining that contraband will be found in his home?

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No._____

In the Supreme Court of the United States

October Term, 1985

RAYMOND WALTER AHO,
Petitioner,

VS.

THE STATE OF CALIFORNIA,
Respondent.

PETITON FOR WRIT OF CERTIORARI IN A CRIMINAL CASE

OPINIONS BELOW

The opinion and judgment of the Court of Appeal of the State of California, Fifth Appeliate District sought to be reviewed by this petition is Criminal Number F003260, rendered on April 15, 1985. The official citation is 166 California Appellate Reports 3d Series 984, certified for partial publication under California rule of Court 976.1. (See Appendix A.)

JURISDICTION OF THIS COURT

The Court of Appeal affirmed petitioner's conviction on April 15, 1985, and petitioner's motion for rehearing was denied on May 15, 1985. Petitioner timely sought discretionary review in the California Supreme Court on May 24, 1985. On August 1, 1985, the California Supreme Court denied his Petition for Review. (See Appendix B.)

Petitioner asserted below, and asserts here, deprivation of his right to be secure in his house, as guaranteed by the United States Constitution, Amendment IV. Title 28 United States Code section 1257(3) and Rule 17(1)(c) of the Rules of this Court confer certiorari jurisdiction in this Court to review the judgment in petitioner's case.

CONSTITUTIONAL PROVISION

The constitutional provision which the instant case involves is the Fourth Amendment to the United States Constitution which is set out verbatim below.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

In March of 1983 Ron Plants, the affiant and a Deputy Sheriff with the Stanislaus County Sheriff's Department, was conducting an undercover operation to

purchase methamphetamine. On March 10th, Deputy Plants went to the home of Keith Allen Russell in Modesto, California, to arrange the purchase of two ounces of methamphetamine. While Deputy Plants was there Russell received a phone call from his "connection," Dennis Ramirez Lopez, also known as Olie. After the phone call Russell said Olie could get only one and one-half ounces. Russell told Deputy Plants that a person who sold a lot of methamphetamine was an "Uncle Ray" who lived in Waterford. Nowhere in the affidavit did Russell say that he or Olie got their methamphetamine from "Uncle Ray," nor did he say he had seen "Uncle Ray" sell methamphetamine from his home, nor did he say he had seen "Uncle Ray" sell methamphetamine, nor did he say he had personally met "Uncle Ray." Russell does say "Uncle Ray" frequently traded stolen property for methamphetamine.

After buying one and one-half ounces of methamphetamine, Deputy Plants arrested Russell, Olie, and a Jerry Lee Cole. After his arrest Russell said he was just a "go-for" and "the main guy named 'Ray' out of Waterford."

A search pursuant to a warrant was made of Russell's home. An address book was found that contained the name of Uncle Ray Aho, his address in Waterford and his phone number. On March 11, 1983, Deputy Plants contacted Officer Fenn from the Waterford Police Department. Officer Fenn had been informed by an untested source that Uncle Ray Aho was "trading a lot of stolen property for dope" and relayed this infor-

mation to Deputy Plants. Deputy Plants confirmed that the address and phone number found at Russell's home belonged to a Raymond W. Aho.

Deputy Plants drafted an affidavit containing the above information and concluded with a statement that his experience was that persons dealing in controlled substances or stolen property frequently keep the contraband in their residence. (See Appendix C.)

The search warrant was signed on March 11, 1983, and the search pursuant thereto of petitioner's home found a little more than one ounce of methamphetamine and a little less than one pound of marijuana.

On May 24, 1983, petitioner raised the Fourth Amendment question in his motion to suppress evidence in Stanislaus County Superior Court. This motion was denied on June 22, 1983. A motion to reconsider was denied on August 2, 1983. Thereafter, on September 19, 1983, petitioner plead guilty to the felonies of possession of methamphetamine for sale and possession of marijuana for sale. Petitioner then timely appealed his conviction to the California Court of Appeal, Fifth Appellate District, based on denial of his suppression motion pursuant to California Penal Code section 1538.5(m).

ARGUMENT

The Instant Case Is a Matter of First Impression, and the Opinion Below Conflicts With Every Decision of This Court.

The affidavit reflects the fact that no one has described any suspicious activity associated with

petitioner's home. The California Court of Appeal has decided a Federal question in a way which conflicts with the decisions of this Court. Petitioner's counsel has not found any opinion of this Court upholding the search of a particular location when there were no objective facts providing probable cause for the search of that location. Although Federal Courts of Appeals have considered the questions here presented (See *United States v. Spach* [7th Cir. 1975] 518 F2d 866, 872, and cases cited therein), every decision of this Court has been grounded upon the existence of independent probable cause for the location, which independent probable cause was lacking for petitioner's home.

The issue here presented has been resolved in petitioner's favor by *Illinois v. Gates* (1983) 462 US 213 and *United States v. Leon* (1984) 468 US___ [82 L.Ed2d 677]. In *Leon* this Court stated that "good faith on the part of the arresting officers is not enough" (*Id* at 694 note 13) and cited *Gates* approvingly in holding that "reviewing courts will not defer to a warrant based on an affidavit that does not 'provide the magistrate with a substantial basis for determining the existence of probable cause.' " *Id* at 693.

In *Gates*, supra, this Court abandoned the "two-pronged test" of *Aguilar v. Texas* (1964) 378 US 108 and *Spinelli v. United States* (1969) 393 US 410 and

> "[i]n its place we reaffirm the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations. See *Jones v. United States, supra; United States v. Ventresca,* 380 US 102 (1965); *Brinegar v. United*

> *States,* 338 US 160 (1949). The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime *will be found in a particular place.*" *Id* at 238 (emphasis supplied).

In contrast to petitioner's circumstances, in *Jones,* supra, (1959) 362 US 257, 268, the informant reported that the defendant "kept a ready supply of heroin on hand in the apartment" and that he had purchased heroin there the day before. In *Ventresca,* supra, at 380 US 104, the police observed suspicious activity and deliveries of what they suspected was contraband "at Ventresca's house." In *Brinegar,* supra, at 338 US 162-163, the defendant had been previously arrested by the officer for illegally transporting liquor, he had been seen in the past loading liquor into his car in a wet state nearby and his car was observed as being "heavily loaded" and coming from a wet state five miles across the border when he was searched. The totality of the circumstances analysis obviously requires probable cause for the location of the search. Indeed, in *Gates,* supra, the informant stated drugs were in the Gates' car and in the basement of the house (at 462 US 225) and the information was then corroborated by an independent investigation that "standing alone" suggested the Gates were involved in drug trafficking. (*Id* at 243).

The differences between the affidavit in petitioner's case and *Leon* are also striking. In *Leon* two of the

three residences were mentioned by the informant as storage areas for drugs (at 82 L.3d2d 685) and the police observed "other material activity at the two residences as well as at [the third location searched]." *Ibid.* In virtually every other case cited in *Gates* and *Leon* the probable cause was based on suspicious or criminal activity at the location to be searched.[1]

In the instant case, Russell and the other untested informant never said that petitioner distributed contraband from his home, or that they had seen it there, or even that they had been told that he kept it there. Thus neither informant gave any fact establishing that contraband would be found "in a particular place." *Gates,* supra, at 462 US 238. The police investigation cannot properly be called corroboration because it merely confirmed petitioner's identity as "Uncle Ray." There was nothing approaching the *Gates* or *Leon* corroboration and there were no *facts* observed by the police to indicate that contraband would be found "in a particular place." *Ibid.* Here there was nothing but the "bare bones conclusion" of Deputy Plants that contraband would be in a particular place — the probable cause requirement cannot be supplanted by the subjective bald opinion of Deputy Plants. *Florida v. Royer* (1983) 460 US 491, 507-508; *Nathanson v. United States* (1933) 290 US 41.

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[1] In *Adams v. Williams* (1972) 407 US 143, 145, the police were told that drugs and a gun were in the defendant's car. In *United States v. Harris* (1971) 403 US 573, 575, the informant purchased illegal whiskey at the defendant's house. In *Rugendorf v. United States* (1963) 376 US 528, 532, the informant saw the stolen fur in petitioner's basement. In *Ker v. California* (1962) 374 US 23, 27, the police had information that Ker was selling marijuana from his apartment and followed Ker there after observing a suspicious transaction. See also *Draper v. United Sates* (1959) 358 US 307 and *United States v. Cortez* (1981) 449 US 411.

Previous opinions of this Court uniformly hold that there must exist some probable cause, some substantial basis grounded in objective facts, for a search of a particular location. The recent cases of *Gates* and *Leon* do not change this requirement; any other interpretation would mandate that opinions such as *Chimel v. California* (1968) 395 US 752 be overruled and "Fourth Amendment protection in this area would approach the evaporation point." *Id* at 765.

CONCLUSION

Because the appellate opinion in the instant case conflicts with all applicable decisions of this Court and involves an important question of Federal law, this Court should grant the petition for certiorari to review the judgment in this case.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX

APPENDIX A

166 Cal.App.3d 984

CERTIFIED FOR PARTIAL PUBLICATION*

In the Court of Appeal of the State of California

Fifth Appellate District

THE PEOPLE,
Plaintiff and Respondent,

VS.

RAYMOND WALTER AHO,
Defendant and Appellant.

5 Crim. No. F003260 (Super. Ct. No. 190809)

OPINION

COURT OF APPEAL

5th APPELLATE DISTRICT

Filed April 15, 1985

By KEVIN A. SWANSON, Clerk, Deputy

APPEAL from a judgment of the Superior Court of Stanislaus County. Charles V. Stone, Judge. Affirmed.

Krech & Cole and Richard J. Krech for Defendant and Appellant.

John K. Van de Kamp, Attorney General, Robert D. Marshall, Eileen Ceranowski and Jane Lamborn, Deputy Attorneys General, for Plaintiff and Respondent.

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*Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exceptions of parts II through IV.

OPINION

BEST, J.—

STATEMENT OF THE CASE

Defendant appeals from his convictions of possession of methamphetamine for sale and possession of marijuana for sale, violations of Health and Safety Code sections 11378 and 11359. Defendant was sentenced to the middle term of two years for each conviction to be served concurrently. Defendant attacks his conviction and sentence on four points: (1) No probable cause justified the search of his residence; (2) the trial court erroneously denied defendant probation; (3) the trial court erroneously imposed the middle term sentence; and (4) defendant's attorney was involved in a conflict of interest regarding the case that requires reversal.

PROCEDURAL BACKGROUND

On May 3, 1983, an information was filed in the Stanislaus County Superior Court charging defendant with violating Health and Safety Code seciton 11378, possession of methamphetamine for sale (count I) and with violating Health and Safety Code section 11359 (count II) possession of marijuana for sale. Defendant was arraigned and pled not guilty to both counts.

Defendant subsequently filed a notice of motion and motion to suppress evidence pursuant to Penal Code section 1538.5. The trial court denied the motion to suppress on June 22, 1983, upholding a search warrant on the basis of *Illinois v. Gates* (1983) 462 U.S. 213 [76 L.Ed.2d 527, 103 S.Ct. 2317].

Defendant filed a motion to reconsider, but the motion was denied. Jury trial was set for September 19, 1983.

On September 19, defendant withdrew his plea of not guilty and entered a plea of guilty to counts I and II.

Before sentence was pronounced, defendant substituted Richard J. Krech as his attorney in the place of Cornelio Q. Hernandez.

On October 27, 1983, the trial court denied defendant probation and sentenced him to the middle term of two years on each count. The sentences were imposed concurrently.

STATEMENT OF FACTS

On March 11, 1983, Officer Art Garza and several other police agents served a search warrant on defendant at his residence in Waterford. Agent Garza knocked on the front door of defendant's home. He advised defendant he was a police agent and that he had a search warrant. Defendant allowed the agents in the house. Agent Garza handcuffed defendant and gave him a copy of the warrant. A search of the house produced evidence of drug sales.

The agents discovered a substance they believed to be methamphetamine. Part of the substance was found on defendant's person. Another portion was discovered on a garage shelf. The majority of the substance was discovered in the garage hidden in a phony oil can. John Yoshida, a criminalist with the Modesto Crime

Lab, tested the substance and determined that it was methamphetamine. A total of 35.74 grams was seized at defendant's residence.

The agents also found and seized a large quantity of marijuana in several places in defendant's home and garage. Agent Garza tested the suspected marijuana and determined the substance seized was marijuana. Approximately 395.26 grams were discovered at defendant's residence.

In addition to the drugs, the agents found scales, mannitol, which is a substance used to mix with a narcotic to make a larger supply, and several tote sheets, which are records of drug sale transactions.

The affidavit supporting the search warrant served on defendant was sworn out by Ron Plants, a deputy sheriff with the Stanislaus County Sheriff's Department. In the affidavit, Deputy Plants first set out his educational training and background in narcotics investigation. He then stated he had reasonable cause to believe that evidence presently would be found at defendant's residence that would establish violations of Health and Safety Code sections 11377 and 11378 and Penal Code section 496.

Deputy Plants stated he had been involved in an undercover narcotics investigation at the home of Keith Allen Russell in Modesto. On March 10, 1983, he sought to purchase two ounces of methamphetamine from Russell. While at Russell's home, Russell received a call from a person named "Olie," later identified as

Dennis Ramirez Lopez. After this call, Russell informed Plants that he could only sell Plants one and one-half ounces of methamphetamine because his connection could not supply more than that. During their negotiations, Russell told Plants that a person named Uncle Ray was responsible for dealing most of the methamphetamine or "crank," and that Uncle Ray lived in Waterford.

Russell and Plants then drove to another location to complete their deal and, on the drive, Russell repeated that Uncle Ray was "good for a lot of dope" and that Uncle Ray frequently traded stolen property for methamphetamine. At the close of Deputy Plants' operation, Keith Russell, Dennis Lopez and Jerry Lee Cole were arrested for conspiracy and sales of methamphetamine. After Russell was arrested, he told another agent that he was simply a "go-for" and that "The main guy is a guy named 'Ray' out of Waterford."

A search pursuant to a warrant was made of Russell's home. An address book was found that contained the name of Uncle Ray Aho, his address in Waterford and his phone number. On March 11, 1983, Deputy Plants contacted Officer Fenn from the Waterford Police Department. Officer Fenn had been informed by an untested source that Uncle Ray was "trading a lot of stolen property for dope" and relayed this information to Deputy Plants.

Deputy Plants confirmed that the address and phone number found at Russell's home belonged to a Raymond W. Aho. Plants also stated that Raymond

Aho had an arrest record for possession of marijuana, possession of dangerous drugs, possession of a concealed weapon, possession of a dangerous weapon and attempted burglary. Aho had been convicted of possession of marijuana and possession of a concealed weapon.

Deputy Plants concluded the affidavit by stating that in his experience, a person involved in drug sales and stolen property normally keeps controlled substances and stolen property in his car or his home. Plants requested a warrant authorizing a search of the residence, grounds and outbuildings located at defendant's residence, defendant's person and any vehicle registered to defendant.

A judge issued the warrant on March 11, 1983.

I

THE SEARCH WARRANT WAS SUPPORTED BY PROBABLE CAUSE

After the preliminary hearing, defendant filed a motion to suppress evidence pursuant to Penal Code section 1538.5, Defendant claimed the affidavit supporting the search warrant failed to meet the two-pronged test established by *Aguilar v. Texas* (1964) 378 U.S. 108, 114 [12 L.Ed.2d 723, 84 S.Ct. 1509] and refined in *Spinelli v. United States* (1969) 393 U.S. 410, 415-416 [21 L.Ed.2d 637, 89 S.Ct. 584].)[1] The trial court denied the motion, relying on *Illinois v. Gates, supra,* 462 U.S. 213 (76 L.Ed.2d 527, 103 S.Ct. 2317). Defendant contends the trial court's decision to uphold the warrant was erroneous.

[1] Defendant also objected to the manner in which the search warrant was executed; however, the resolution of this issue against defendant is not raised in this appeal.

In *In re Lance W.* (1985) 37 Cal.3d 873 [210 Cal.Rptr. 631, 694 P.2d 744], the Supreme Court of California held that article I, section 28, subdivision (d), added to the California Constitution by the adoption of Proposition 8 in June 1982, was intended to permit exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States Constitution. The United States Supreme Court in *Gates* recently articulated the magistrate's duty in finding that a search warrant is supported by probable cause: "The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates, supra,* 462 U.S. at p. 238 [76 L.Ed.2d at p. 548, 103 S.Ct. at p. 2332].)

In approving the totality of the circumstances approach, the *Gates* court overruled the two-pronged *Aguilar-Spinelli* test. The two-pronged test required that before a search warrant could issue on the basis of an informant's tip, the affidavit had to include facts showing the informant's credibility or reliability and the basis of his knowledge. (*Aguilar v. Texas, supra,* 378 U.S. at p. 114 [12 L.Ed.2d at p. 723, 84 S.Ct. at p. __]; *Spinelli v. United States, supra,* 393 U.S. at pp. 415-416 [21 L.Ed.2d at p. 637, 89 S.Ct. at p. __]; *People v. Campa* (1984) 36 Cal.3d 870, 879-880 [206 Cal.Rptr. 114, 686 P.2d 634].) The *Gates* court noted that the probable-

cause standard is a "practical, nontechnical, conception." It concluded that the rigid two-pronged test was simply not suitable for testing probable cause. (*Illinois v. Gates, supra,* 462 U.S. at p. 231 [76 L.Ed.2d at p. 544, 103 S.Ct. at p. 2328].)

The court discussed at length the totality of the circumstances approach. The approach "permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informant's tip . . . ." (*Gates, supra,* 462 U.S. at p. 234 [76 L.Ed.2d at p. 545, 103 S.Ct. at p. 2330].) The two prongs of the *Aguilar-Spinelli* test may still be used in testing probable cause; however, the informant's veracity and basis of knowledge are now only "relevant considerations in the totality-of-the-circumstances analysis . . . a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other or by some other indicia of reliability." (*Illinois v. Gates, supra,* 462 U.S. at p. 233 [76 L.Ed.2d at p. 545, 103 S.Ct. at p. 2329].)

The court also presented two types of affidavits that would not support a finding of probable cause. A sworn statement of an affiant that he has cause to suspect and believes criminal activity is taking place on certain premises will not be sufficient. (*Gates, supra,* 462 U.S. at pp. 238-239 [76 L.Ed.2d at pp. 548-549, 103 S.Ct. at p. 2332].) Also, a statement that the affiant has reliable information from a credible person and believes drugs are located at a home would be inadequate. (*Ibid.*) The court noted the requirement still exists that "Sufficient

information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." (*Ibid.*)

The court also discussed the standard of review of a magistrate's determination of probable cause. The reviewing court must pay great deference to a magistrate's finding of probable cause. A trial de novo should not be held on appeal. "[T]he traditional standard for review of an issuing magistrate's probable-cause determination has been that so long as the magistrate had a 'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." (*Illinois v. Gates, supra,* 462 U.S. at p. 236 [76 L.Ed.2d at p. 547, 103 S.Ct. at p. 2331].)

We, therefore, must test the affidavit of Deputy Plants under the totality-of-the-circumstances approach set forth in *Gates* to determine whether probable cause existed for the issuance of the search warrant.

While working in an undercover capacity, Deputy Plants was negotiating with Russell to purchase two ounces of methamphetamine. During these negotiations, Russell told Deputy Plants that the person dealing most of the "crank" was "Uncle Ray" who lives in Waterford; that "Uncle Ray" in Waterford was "the big connection," "was good for a lot of dope" and that "Uncle Ray" frequently traded stolen property for methamphetamine.

These statements by Russell must be presumed reli-

able since they were unwittingly made to an undercover police officer. (*People v. Fleming* (1981) 29 Cal.3d 698, 708 [175 Cal.Rptr. 604, 631 P.2d 38].) Such "utterances by a suspected accomplice can be presumed to be reliable in these circumstances since they 'were not made for the selfish purpose of currying favor with law enforcement to mitigate the punishment of [the individual's] own criminal acts, or with the ulterior motive of causing the arrest of the petitioner upon a false accusation.' " (*Ibid.; Ming v. Superior Court* (1970) 13 Cal.App.3d 206, 214 [91 Cal.Rptr. 477].)

Russell's statements to Deputy Plants were corroborated by his later statement to agent Mann that "Those two other guys that your [*sic*] arrested are just two go-fors, like me. The main guy is a guy named 'Ray' out of Waterford." Further corroboration of Russell's statements is found in information provided to Deputy Plants by Officer Fenn of the Waterford Police Department that an untested source had stated that Uncle Ray Aho was "trading a lot of stolen property for dope." The California Supreme Court has noted that ". . . there may be circumstances where corroborative information from separate, unrelated sources will thereby establish its credibility . . . ." (*People v. Fein* (1971) 4 Cal.3d 747, 753 [94 Cal.Rptr. 607, 484 P.2d 583].) Furthermore, case law holds that "Corroboration is not limited to a given form but includes within its ambit any facts, sources, and circumstances which reasonably tend to offer independent support for information claimed to be true." (*People v. Levine* (1984) 152 Cal.App.3d 1058, 1065 [199 Cal.Rptr. 756].) Addi-

tional corroboration of Russell's information concerning defendant's identity and residence in Waterford was provided by the finding of defendant's name, address and telephone number in an address book in Russell's apartment following Russell's arrest and the subsequent investigation confirming defendant's identity, address and telephone number.

Defendant contends that his arrest and conviction record included in the affidavit is irrelevant and stale and should not be considered. Under California law, a suspect's narcotic arrest record always has been considered relevant to the magistrate's determination of probable cause. (*People v. Kershaw* (1983) 147 Cal.App.3d 750, 760 [195 Cal.Rptr. 311]; *People v. Childress* (1979) 99 Cal.App.3d 36, 41 [160 Cal.Rptr. 47]; *People v. Scott* (1968) 259 Cal.App.2d 268, 276 [66 Cal.Rptr. 257].) The defendant's arrest and conviction record is no less relevant under the totality-of-the-circumstances test.

Defendant further contends that even if probable cause existed to believe he was engaged in criminal activity, the affidavit was insufficient to justify the search of his home.

In his affidavit in support of the search warrant, Deputy Plants detailed his training and experience as a narcotics investigator. He further stated that in his experience as a narcotics detective persons dealing in controlled substances and stolen property will frequently secrete contraband in closed or locked containers and other closed or locked hiding places within their

residence and motor vehicles. In *People v. Johnson* (1971) 21 Cal.App.3d 235 [98 Cal.Rptr. 393], police conducted a search of an apartment defendant had rented for one month. The search revealed large quantities of drugs and a fully loaded machine gun. A search warrant for defendant's permanent residence was sought. The affidavit contained the results of the first search, a statement by one officer that he knew defendant was a major supplier of drugs, and another officer's statement that his experience in the field provided him with knowledge of drug dealers' methods of operation. The latter officer stated he believed a quantity of drugs would be found at defendant's residence in addition to the drugs found at the apartment. (*Id.*, at p. 243.) The court held this belief was reasonable and upheld the search warrant.

Similarly, in the case at bench, Deputy Plants' statements and belief based upon his training and experience were reasonable and, taken together with the other information in the affidavit as noted above, adequately support the magistrate's conclusion of probable cause to believe that evidence of defendant's criminal activity, i.e., drugs or stolen property, would be found within defendant's residence.

II*

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PROBATION

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The judgment is affirmed.

Franson, Acting P.J., and Martin, J., concurred.

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*See footnote on page 984, *ante*.

APPENDIX B

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102
8-1-85

I have this day filed, Order _____

_____

REVIEW DENIED

_____

_____

_____

_____

In re: _____

No. F003260

PEOPLE *vs.* RAYMOND WALTER AHO

Respectfully,
Clerk

APPENDIX C

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

(Penal Code Section 1524)

STATE OF CALIFORNIA
COUNTY OF STANISLAUS } SS 189034-15

FILED 1983 MAR 21 AM 10 49
DAVID A. WURM, CLERK
By JoAnn Heermann, Deputy

I, RON PLANTS, am a Deputy Sheriff with the Stanislaus County Sheriff's Department, and I have been a Deputy Sheriff since September, 1976, with this agency. Since January, 1971, I have been employed as a full-time peace officer. I am currently assigned exclusively as a Narcotics Detective with the Stanislaus County Drug Enforcement Unit, and I have been so assigned since February, 1981. I have received eighty hours of training conducted by the State of California, Department of Justice, Sacramento, California, on narcotics investigation. I have received twenty hours of training conducted by the State of California, Richmond, California, on the identification of heroin and heroin users. I have received eight hours of training conducted by the Valley Toxicology Service, Davis, California, on the presumptive chemical analysis of controlled substances. I have received approximately eight hours of training on narcotics investigation and drug identification received at the Basic Police

Academy in Eureka, California, from which I graduated in 1972. Since being assigned as a Narcotics Detective with the Stanislaus County Drug Enforcement Unit, I have also worked in an undercover capacity. Since being assigned as a Narcotics Detective with the Stanislaus County Drug Enforcement Unit, I have testified in both the Municipal and Superior Courts of Stanislaus County and have been classified as an expert witness on the identification, investigation and analysis of controlled substances. Since being assigned as a Narcotics Detective with the Stanislaus County Drug Enforcement Unit, I have testified in the United States District Court in Fresno, California, and have been classified as an expert witness on narcotics investigation.

I have reasonable cause to believe, and I do believe, that there can now be found at 628 Tim Bell Road, Waterford, California, and on the person of Raymond Walter Aho, also known as "Uncle Ray," described as being a white male adult, approximately five feet eleven inches tall, weighing approximately two hundred pounds, having brown hair and green eyes, believed to be Raymond Walter Aho, having a date of birth of December 27, 1934, evidence which will tend to establish violations of Sections 11377 and 11378 of the California Health and Safety Code, and 496 of the California Penal Code.

I have requested Officer Fenn, Identification Number 34, who is a Police Officer for the City of Waterford, to drive by the residence of 628 Tim Bell Road, Waterford, California, and Officer Finn described the residence to me as follows:

The residence at 628 Tim Bell Road, Waterford, California, is described as being a one story single family residence, and is the first residence on the east side of Tim Bell Road north of Bonnie Brae, Waterford, California. The front of the residence is yellow in color with brown trim. There is a small wooden sign over the doorway that says "Ray and Kim." There is a mailbox located near the roadway in the front of the residence which has the numerals "628" affixed to the mailbox. There is a small white picket fence around the front perimeter of the residence of 628 Tim Bell Road, Waterford, California. There is also a small wooden structure similar to a small garage or work shed located to the south side of the residence at 628 Tim Bell Road, Waterford, California.

Your affiant was involved in an undercover activity where your affiant had been put in contact with Keith Allen Russell who resides at 908 Aeron Court, Modesto, California. On Thursday, March 10, 1983, your affiant contacted Keith Allen Russell to negotiate for the two ounce purchase of methamphetamine. The two ounce purchase was originally discussed to be for $2,500.00 for the two ounces of methamphetamine. Through the course of negotiations, Keith Allen Russell received a telephone call from a person who Keith Allen Russell referred to as "Olie" who was later identified as Dennis Ramirez Lopez residing at 221 Cloverdale, Modesto, California. After that telephone call was received by Keith Allen Russell with the caller being Dennis Ramirez Lopez, also known as "Olie," and terminated, Keith Allen Russell then told me that all he

was able to put together through his connection was an ounce and one-half, as Russell's connection was only able to get that amount fronted to him. While your affiant was with Keith Allen Russell at 908 Aeron Court, Modesto, Russell told your affiant that the person dealing most of the "crank," which is a street slang for methamphetamine, is a person who Keith Russell referred to as "Uncle Ray," who lives in Waterford. During the course of the undercover buy it became necessary for Keith Allen Russell and your affiant to leave the residence of 908 Aeron Court, Modesto, California, and to drive to Yosemite Lanes which is located on Yosemite Boulevard, Modesto, California. During the drive from 908 Aeron Court, Modesto, California, to Yosemite Boulevard, Modesto, Keith Allen Russell told your affiant that the big connection, who was referred to as "Uncle Ray" in Waterford, was good for a lot of dope, referring to amount of methamphetamine that "Uncle Ray" was to possess for sales. Keith Allen Russell also stated that "Uncle Ray" frequently traded stolen property for methamphetamine.

Your affiant subsequently concluded the undercover activity that your affiant was presently involved where Keith Allen Russell, Jerry Lee Cole and Dennis Ramirez Lopez, also known as "Olie," were all arrested for conspiracy and for sales of methamphetamine. The undercover assignment climaxed after your affiant purchased one and one-half ounces of methamphetamine for $1,800.00 on a buy/bust where the suspects were subsequently apprehended and arrested.

Agent Terry Mann of the Stanislaus County Drug Enforcement Unit was designated to be the booking officer at the Stanislaus County Jail. Keith Allen Russell was transported to the Stanislaus County Jail where Agent Terry Mann advised Russell of his Constitutional Rights via Miranda. Russell understood his rights and agreed to talk to Agent Mann. Agent Mann advised me of the following:

Agent Terry Mann informed me that he asked Russell the following questions, "did this 'crank' come directly from the lab?" Keith Allen Russell replied, stating, "Those two other guys that your arrested are just two go-fors, like me. The main guy is a guy named 'Ray' out of Waterford."

After completion of the undercover activity, Agents of the Stanislaus County Drug Enforcement Unit were armed with a Search Warrant which was to be served at 908 Aeron Court, Modesto, California. During the service of the Search Warrant at 908 Aeron Court, Modesto, California, a yellow address book was located and under the "R" section of the address book was the following: "Uncle Ray Aho, 628 Tim Bell Road, Waterford, California, 95386, 1-874-1541."

On Friday, March 11, 1983, I made contact with Officer Fenn of the Waterford Police Department, who informed your affiant that within the past two weeks of today's date, March 11, 1983, that Officer Fenn had obtained information from an untested source that Uncle Ray Aho was "trading a lot of stolen property for dope."

On Thursday, March 10, 1983, your affiant tested the ounce and one-half of purchased methamphetamine via the Valtox Presumptive Test Kit finding it to test positive for methamphetamine.

The utilities for 628 Tim Bell Road, Waterford, California, have been checked through the Modesto Irrigation District and it has been determined that they are in the name of Raymond W. Aho and have been in that name since February 18, 1977.

The telephone number of 874-1541 has been checked through the Pacific Telephone Company and it has been determined that telephone number 874-1541 is listed in the name of Raymond W. Aho at 628 Tim Bell Road, Waterford, California.

Your affiant has checked the Identification Bureau of the Stanislaus County Sheriff's Department and learned that in 1969 Raymond Walter Aho, having a date of birth of December 27, 1934, has had contact with law enforcement on three different occasions, which are as follows:

In 1969, Raymond Walter Aho was arrested for possession of marijuana, possession of dangerous drugs and possession of a concealed weapon. The court disposition indicated a conviction on possession of marijuana only.

In 1976, Raymond Walter Aho was arrested for possession of dangerous drugs and a concealed weapon violation. The disposition indicated a conviction of possession of a concealed weapon.

In 1982, Raymond Walter Aho was arrested for possessing a dangerous weapon and for attempted burglary. At this time there is no indication of a court disposition.

Your affiant has completed a Department of Motor Vehicle computer check on Raymond Walter Aho indicating an address of 628 Tim Bell Road, Waterford, California, describing Raymond Walter Aho as a male adult, five feet eleven inches tall, weighing two hundred pounds, having brown hair and green eyes.

It has been my experience as a Narcotics Detective that motor vehicles are a common method used by persons dealing in dangerous drugs and stolen property to transport, conceal and sell their drugs and stolen property in.

It has further been my experience as a Narcotics Detective that persons dealing in controlled substances and stolen property will frequently secrete the contraband in closed or locked containers, such as handbags, suitcases, briefcases, paper bags, and other closed or locked hiding places within their residence and motor vehicles.

THEREFORE, I ask the Court to authorize a search of the residence, grounds and outbuildings located at 628 Tim Bell Road, Waterford, California, and the person of Raymond Walter Aho, also known as "Uncle Ray," described as being a white male adult, approximately five feet eleven inches tall, weighing approximately two hundred pounds, having brown hair and green eyes, believed to be Raymond Walter Aho, hav-

ing a date of birth of December 27, 1934, and all persons who arrive during the service of the Search Warrant who state that they reside at the residence of 628 Tim Bell Road, Waterford, California, and any vehicles registered to or under the immediate control of Raymond Walter Aho, also known as "Uncle Ray," who is believed to be Raymond Walter Aho, having a date of birth of December 27, 1934, and any vheicles registered to or under the immediate control of all persons who reside at 628 Tim Bell Road, Waterford, California, at the time of service of the Search Warrant, and any closed or locked containers, such as handbags, suitcases, briefcases, paper bags, and other closed or locked hiding places, for methamphetamine and paraphernalia associated with the use and sale of methamphetamine, and for stolen property, as well as receipts of sales and/or purchases of stolen property, and for any documents identifying the occupants of 628 Tim Bell Road, Waterford, California, which documents shall include such items as utility bills, receipts and letters addressed to the occupants of 628 Tim Bell Road, Waterford, Californa, and for any records or documents showing the purchase or sales of methamphetamine and stolen property.

Ron Plants

RON PLANTS